

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Further Inquiry Into Certain Issues in the Universal
Service-Intercarrier Compensation Transformation
Proceeding

WC Docket Nos. 10-90, 07-135,
05-337, 03-109

CC Docket Nos. 01-92, 96-45

GN Docket No. 09-51

DA No. 11-1348

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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TABLE OF CONTENTS

I. SUMMARY	2
II. MASSACHUSETTS IS A NET-CONTRIBUTOR, PRICE CAP STATE THAT HAS ALREADY REBALANCED ITS INTRASTATE ACCESS RATES.	3
III. TWO STATE POLICY PRINCIPLES SHOULD GUIDE COMPREHENSIVE REFORM IN CONJUNCTION WITH THE FEDERAL PRINCIPLES.	5
A. Universal Service And Intercarrier Compensation Policy Should Benefit Consumers And Foster Competition As Part Of The Public Interest.	6
B. Universal Service And Intercarrier Compensation Policy Should Embrace The State Role.	6
IV. INTERCARRIER COMPENSATION REFORM UNDER THE ABC PLAN WILL INCREASE CONSUMER RATES AND MAY DECREASE COMPETITION.	7
A. The ABC Plan’s ICC Proposals Will Increase Massachusetts Consumer Rates And May Reduce Competition.	8
1. The ABC Plan’s revenue recovery mechanisms will increase costs for Massachusetts consumers.	9
a. Consumers’ benchmark rates may increase 13% in Massachusetts over five years as the SLC increases to as much as \$10.25.	10
b. The ABC Plan’s access recovery mechanism may mean additional rate increases for Massachusetts consumers.....	11
2. The proposed \$.0007 terminating access rate will likely decrease Massachusetts consumer choice by negatively impacting competition.	11
B. The ABC Plan Inappropriately Preempts State Authority Over Intrastate Rates.	14
V. UNIVERSAL SERVICE CHANGES UNDER THE ABC PLAN SHOULD TREAT CONSUMER CONTRIBUTIONS FAIRLY AND INCLUDE STATE OVERSIGHT.	16
A. The USF Needs To Reflect A More Equitable Level Of Support For States And Funding Needs to be Capped.	16
B. USF Reform Should Retain State Roles.	20
1. COLR requirements are essential to universal service.	20
2. States should retain ETC designation authority for USF support.	21
3. States can examine broadband deployment investment and new construction charges.	22
4. States should receive USF recipient data.	23
VI. CONCLUSION	24

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The Massachusetts Department of Telecommunications and Cable (MDTC)¹ respectfully submits these comments in response to the Public Notice (Notice) issued by the Federal Communications Commission (FCC or Commission) on August 3, 2011, in the above-referenced dockets.² The Notice follows the February 9, 2011, Notice of Proposed Rulemaking (NPRM) intended to reform the high-cost portion of the Universal Service Fund (USF) and intercarrier compensation (ICC).³ The Notice seeks comment on several reform proposals, particularly the July 29, 2011,

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

² *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, GN Docket No. 09-51, Public Notice, DA 11-1348 (rel. Aug. 3, 2011) (Notice). Owing to the truncated timeframe to respond permitted by the FCC, the MDTC does not address every area of concern. The MDTC's silence on any particular issue should not be construed as support or opposition to that issue.

³ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, at ¶ 59 (rel. Feb. 9, 2011) (*Comprehensive ICC/USF Reform NPRM*).

“America’s Broadband Connectivity Plan” (ABC Plan).⁴ The Commission also seeks limited comment on aspects of the consensus plan proposed several months ago by the State Members of the Federal-State Joint Board on Universal Service (State Member Plan).⁵

I. SUMMARY

Six price cap incumbent local exchange carriers (ILECs), including Verizon, AT&T, CenturyLink, FairPoint, Frontier, and Windstream, offered the ABC Plan, and it is supported by three rural rate-of-return (ROR) ILEC trade associations.⁶ The ABC Plan would provide USF funding for broadband services with actual download speeds of 4 Mbps and upload speeds of 768 kbps through the Connect America Fund (CAF) and an Advanced Mobility Fund (AMF). It would change ICC rules, with lost revenue assessed to consumers.⁷ Supporters insist that the ABC Plan is non-divisible as each part is the result of balanced negotiations.⁸ Yet, a critical segment of the telecommunications industry, state regulators, did not participate in the Plan’s formulation. Those regulators’ public interest mandate is not satisfactorily reflected in the ABC Plan. The FCC should review the ABC Plan considering the state regulator’s viewpoint and adjust the Plan accordingly.

The MDTC encourages the FCC to incorporate two state policy principles with existing federal principles when reforming the USF and ICC, consumer benefit and state oversight. These two principles reflect concerns for consumer rate shock, competition, and continued need for state oversight. The \$30.00 rate benchmark proposed under the ABC Plan may increase Massachusetts

⁴ Notice at 1-2; Letter and Attachments from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed Jul. 29, 2011) (ABC Plan).

⁵ Notice at 1; Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) (State Member Plan).

⁶ Notice at 1; Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (Joint Letter).

⁷ ABC Plan, Attachment 1.

⁸ *Id.* at 1; Joint Letter at 1.

consumers' average monthly bills for basic residential service by over 13% over a five-year period as the existing federal subscriber line charge (SLC) cap increases from \$6.50 to as much as \$10.25. Competitive choices for services may also diminish if the FCC adopts the ABC Plan, as will state oversight. Massachusetts, like some other states, has already achieved the FCC's objectives of a more unified interstate/intrastate access regime for intercarrier compensation. Further reductions of Massachusetts' composite termination rate of \$.003752 or \$.004820 (if tandem switching is included) to the ABC Plan's proposed unified termination rate of \$.0007 for ICC and reciprocal compensation may trigger additional fees on consumers' bills. Additionally, USF reform should reflect consumer equity, as Massachusetts received less than 28% of its contributions to the USF in 2009. Capping the high-cost USF and allowing the states to continue their roles in a state-federal framework are the best approaches to reforming the USF. Consequently, the FCC should modify the ABC Plan to reflect the states' public interest concerns with regard to consumer fairness and state oversight for ICC and USF reform.

II. MASSACHUSETTS IS A NET-CONTRIBUTOR, PRICE CAP STATE THAT HAS ALREADY REBALANCED ITS INTRASTATE ACCESS RATES.

Massachusetts consumers routinely pay significantly more support into the federal USF than they receive in benefits, categorizing Massachusetts as a net payor or net-contributor state. For example, in 2009, Massachusetts businesses and consumers paid an estimated \$169,539,000 into the USF but received only \$46,335,000 in total support, and only \$2,413,000 in high-cost support, making Massachusetts the second lowest receiving state in the nation for high-cost support.⁹ Three ROR ILECs operate in three small Massachusetts communities, while the rest of the state is served by

⁹ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report – Data Received Through October 2010*, CC Docket Nos. 96-45 and 98-202, at Table 1.12 (listing the annual payments and contributions, in thousands, by state for 2009) (*2010 Monitoring Report*). Utilizing the data from Table 1.12, Massachusetts ties with Delaware for second lowest state in the nation for high-cost support. Connecticut, the District of Columbia, Rhode Island, and New Jersey tie at first.

Verizon, a price cap/alternative regulation (Alt-Reg) carrier, plus various competitive local exchange carriers (CLECs) and other service providers.¹⁰

Massachusetts has already rebalanced its intrastate access rates and thus has achieved one of the FCC's primary goals in the NPRM. In 2009, through an adjudicatory decision, the MDTC reformed competitive carrier intrastate access rates, requiring them to reduce their intrastate access charges to Verizon's composite intrastate access rate, currently set at \$.003752 or \$.004820 (if tandem switching is included) for terminating access.¹¹ The MDTC first aligned Verizon's intrastate and interstate access in 2002, which was "part of an ongoing process that began in 1989."¹² In 2002, the MDTC limited Verizon's intrastate access rates to no more than its interstate access rates.¹³ In 2009, the MDTC capped competitor intrastate access rates at Verizon's rates, using Verizon's rates as a proxy.¹⁴ The MDTC determined via record evidence that the rates being charged by competitive carriers were not just and reasonable.¹⁵ However, the MDTC permitted an exception if carriers could "demonstrate

¹⁰ MDTC, "Competition Status Report," at 6-14 (rel. Feb. 12, 2010), *available at* http://www.mass.gov/Eoca/docs/dtc/compreport/CompetitionReport_Combined.pdf (last viewed Aug. 15, 2011) (*Massachusetts Competition Status Report*). The MDTC anticipates releasing an updated version of its *Massachusetts Competition Status Report* in Fall 2011.

¹¹ *Petition of Verizon New England, Inc., MCI Metro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order, at 7, 26-27 (Jun. 22, 2009), *available at*: <http://www.mass.gov/Eoca/docs/dtc/dockets/07-9/079finalorder.pdf>, (last viewed Aug. 15, 2011) (*Massachusetts Competitive Access Rate Order*); Verizon Massachusetts Tariff D.T.E. MA No. 15 – Access Service, Rates and Charges Section 30, Page 9 at 30.6.3-30.6.5, and Page 11 at 30.6.9 (pages issued May 1, 2003, eff. Jun. 1, 2003) (last viewed Aug. 15, 2011).

¹² MDTE Comments, CC Docket No. 01-92, at 9 (filed Oct. 25, 2006). The MDTE is the MDTC's predecessor agency.

¹³ *Investigation by the Dep't of Telecomms. & Energy on Its Own Motion into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc.*, D.T.E. 01-31 Phase I, Order, at 62-63 (May 8, 2002), *available at*: <http://www.mass.gov/Eoca/docs/dtc/dockets/01-31/58order.pdf> (last viewed Aug. 12, 2011); *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc.*, D.T.E. Phase II, Order, at 92-93 (Apr. 11, 2003) ("Phase II Order"). The *Phase II Order* also permitted Verizon to increase its basic dial tone rate and move most of its other rates to market-based pricing and transitioned Verizon from a price cap to an "Alt-Reg" carrier. For the purposes of the ABC Plan, the MDTC assumes Massachusetts would still be considered a price cap state.

¹⁴ *Massachusetts Competitive Access Rate Order* at 21-22. The MDTC utilized Verizon's rate as a proxy for a reasonable rate, because the competitive carriers had failed to provide cost-specific data to support the reasonableness of their intrastate access rates. *Id.*

¹⁵ *Id.* at 28.

justifiable costs in excess of the proposed rate cap with cost-specific data” and allowed for a one-year transition period before the cap took effect.¹⁶ Last year, the MDTC opened a docket to determine whether a competitive carrier’s costs exceed Verizon’s rates.¹⁷ Massachusetts does not have a state SLC or state USF, nor did it implement one for revenue recovery.

III. TWO STATE POLICY PRINCIPLES SHOULD GUIDE REFORM IN CONJUNCTION WITH THE FEDERAL PRINCIPLES.

Comprehensive USF/ICC reform requires clear policy principles for guidance. As it considers universal service reform, the Commission is bound by statute to seven principles.¹⁸ Consistent with its statutory authority, the Joint Board has urged the Commission to adopt an eighth principle addressing advanced and voice services, which the FCC indicates it will adopt.¹⁹ In addition, the FCC has adopted four overarching principles to guide its current reform process of both ICC and the USF: 1) modernize USF and ICC for broadband; 2) fiscal responsibility; 3) accountability; and 4) market-driven policies.²⁰

Consistent with the Commission’s own strategy, the MDTC relies on certain principles and standards in its review of various reform proposals and in its response to the Commission. As a preliminary matter, the MDTC generally supports the federal principles²¹ and adds two state principles to guide the MDTC’s own analysis and advocacy herein. First, universal service and ICC policy should

¹⁶ *Id.*

¹⁷ *Petition of Choice One Communications of Massachusetts Inc., Conversent Communications of Massachusetts Inc., CTC Communications Corp. and Lightship Telecom LLC for Exemption from Price Cap on Intrastate Switched Access Rates as Established in D.T.C. 07-9, D.T.C. 10-2, Docket (2010).*

¹⁸ The seven statutory principles concern: 1) quality and rates; 2) access to advance services; 3) access in rural and high cost areas; 4) equitable and nondiscriminatory contributions; 5) specific and predictable support mechanisms; 6) access to advanced telecommunications services for schools, health care, and libraries; and 7) competitive neutrality. 47 U.S.C. §§ 254(b)(1)-(7); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at ¶¶ 43, 47 (rel. May 8, 1997) (*Universal Service First Report and Order*) (subsequent history omitted) (adopting the “Competitive Neutrality” principle recommended by the Joint Board, pursuant to section 254(b)(7)).

¹⁹ *Comprehensive ICC/USF Reform NPRM* at ¶ 59.

²⁰ *Id.* at ¶ 10.

²¹ The Commission would ultimately treat voice as a broadband application under its “modernize USF and ICC for broadband” principle. *Id.* at ¶ 10. The MDTC reserves comment on this point for a later date.

benefit consumers and foster competition as part of the public interest. Second, universal service and ICC policy should embrace the state role.

A. Universal Service And Intercarrier Compensation Policy Should Benefit Consumers And Foster Competition As Part Of The Public Interest.

As the Commission and others have recognized, the purpose of universal service is to benefit the consumer.²² Consumer impacts, therefore, should be a touchstone to the FCC's analysis of any reform. Further, when Congress enacted the Telecommunications Act of 1996 (1996 Act), it not only codified existing universal service policy, the same longstanding policy first implemented by states via carrier-of-last-resort (COLR) obligations,²³ it also intended to promote competition in the communications marketplace. Congress believed that competition would promote consumer welfare by securing "lower prices and higher quality services" for consumers.²⁴ These components of consumer impact and competition are part of the public interest and should be a driving force behind any reform efforts of the USF and the ICC.

B. Universal Service And Intercarrier Compensation Policy Should Embrace The State Role.

As the Commission has recognized, "USF and ICC are both hybrid state-federal systems, and ... reform will work best with the Commission and state regulators cooperating to achieve shared goals."²⁵ Indeed, cooperative federalism between the FCC and state commissions has existed in the communications industry for many years, and states like Massachusetts have succeeded in "delivering responsive consumer protection, assessing market power, setting just and reasonable rates for carriers

²² *Id.* at ¶ 240; Letter from Hon. Edward J. Markey, Chairman, House Subcommittee on Telecommunications and the Internet, to Kevin J. Martin, Chairman, Federal Communications Commission (Apr. 2, 2007) (noting that "the central purpose of the universal service provisions ... is to benefit consumers, not ... carriers").

²³ See e.g., *Petition of the Attorney General for a Generic Adjudicatory Proceeding Concerning Intrastate Competition by Common Carriers in the Transmission of Intelligence by Electricity, Specifically with Respect to Intra-LATA Competition, and Related Issues*, Filed with the Department on December 20, 1983, D.P.U. 1731, Order, at 71-77 (rel. Oct. 18, 1985) (*Massachusetts COLR Order*) (formally instituting COLR obligations on certain carriers).

²⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Preamble (1996) (the 1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.*

²⁵ *Comprehensive ICC/USF Reform NPRM* at ¶ 80.

with market power, providing fact-based arbitration and adjudication” for intercarrier disputes, and eligible telecommunications carrier (ETC) designations, working within the federal schematic.²⁶ The state role is no less relevant now than it was during the monopoly era, since states are most attuned to local conditions.²⁷ Like the FCC, states’ joint vested interests are the protection of consumers and a competitive marketplace.

IV. INTERCARRIER COMPENSATION REFORM UNDER THE ABC PLAN WILL INCREASE CONSUMER RATES AND MAY DECREASE COMPETITION.

The FCC seeks comment on the ABC Plan’s reform proposals for ICC. Under the Commission’s current rules, federal SLCs are subject to caps based on whether the line is: (a) a primary residential or single-line business line; (b) a non-primary residential line; or (c) a multi-line business or Centrex line.²⁸ For price cap and rate-of-return carriers, the current SLC cap for residential and single-line business lines is \$6.50, and the cap for multi-line business and Centrex lines is \$9.20. Price cap carriers also have a SLC cap of \$7.00 for non-primary residential lines.²⁹ The SLC is a voluntary assessment by carriers onto their consumers, and carriers may charge whatever SLC levels they choose as long as they do not exceed the federal caps.

If the FCC adopts the ABC Plan, the residential and single-line business line SLC cap would increase from \$6.50 to \$7.00-\$7.25 in year 1, \$7.50-\$8.00 in year 2, \$7.50-\$8.75 in year 3, \$8.00-\$9.50 in year 4, and \$8.50-\$10.25 in year 5.³⁰ The MDTC assumes that these increases will apply only to the residential/single-line business line SLC cap, since the ABC Plan does not clearly indicate how the

²⁶ NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, LEGISLATIVE TASK FORCE REPORT ON FEDERALISM AND TELECOM, at 4 (2005), available at <http://www.naruc.org/Publications/Federalism%20whitepaper.pdf> (last viewed Aug. 8, 2011).

²⁷ *Id.* at 3, 7.

²⁸ *Comprehensive ICC/USF Reform NPRM* at n.32. The actual SLC cap may be lower than the absolute cap for price cap and rate-of-return ILECs, however, based on certain calculations. *Id.* at n.870.

²⁹ *Id.* at n.32.

³⁰ ABC Plan, Attachment 1 at 12.

SLC caps should be allocated, and the proposed rate benchmark only applies to local residential rates.³¹ The SLC increases would be tempered by a “rate benchmark” ceiling of \$30.00 for price cap carriers in order to control consumer rate increases, and the level of SLC increases would be subject to whether the carrier elects to receive support from the access replacement mechanism.³²

As part of its inquiries, the FCC asks: “Instead of or in addition to a rate benchmark, should states be responsible for contributing a certain dollar amount per line to aid in access recovery?”³³ In particular, states would be responsible for recovery of a certain per-line amount (proposed at \$2.00) before carriers in their state could be eligible for any federal access recovery.³⁴ The FCC inquires as to whether and how to use federal universal service dollars to match any amounts used by states through state USFs to fund intrastate access charge reform.³⁵ After three years and in the case of state inaction, the Commission would force intrastate access rate reductions and deny federal recovery to offset reduced intrastate revenue.³⁶ Simultaneously, the Commission would require a reduction in all carrier interstate access rates over some transition period.³⁷

A. The ABC Plan For ICC Will Increase Massachusetts Consumer Rates And May Reduce Competition.

A paper entitled “Consumer Benefits Paper” drafted by MIT Professor Jerry Hausman accompanies the ABC Plan.³⁸ Professor Hausman states that “consumer welfare is the primary goal of regulation.”³⁹ The MDTC could not agree more. For years, the MDTC’s guiding policy goals have

³¹ *Id.*

³² *Id.* The RLEC Plan proposes a similar \$25 benchmark for SLC increases. Notice at 11.

³³ Notice at 12.

³⁴ *Id.*

³⁵ *Id.* at 12-13.

³⁶ *Id.* at 12.

³⁷ *Id.* at 13.

³⁸ ABC Plan, Attachment 4.

³⁹ *Id.* at 3.

been economic efficiency, fairness, simplicity, earnings stability, continuity, and universal service.⁴⁰

Truly competitive markets benefit consumers and promote the MDTC's policy goals because

“competitive markets promote economic efficiency, technological innovations, and a greater sensitivity to customer demands.”⁴¹ However, a closer review of Professor Hausman's analysis reveals that implementation of the ABC Plan will increase consumer costs and potentially inhibit competitive choice to Massachusetts consumers.

1. The ABC Plan's revenue recovery mechanisms will increase costs for Massachusetts consumers.

Professor Hausman argues that reductions in intercarrier compensation will benefit consumers because, in theory, carriers will pass their savings onto consumers through lower rates.⁴² However, he fails to address or quantify the effect, if any, of the proposed revenue recovery mechanisms on consumer prices. The ABC Plan's forced reductions in all terminating charges to \$.0007 per minute will reduce carrier expenses and will also reduce carrier revenues. The ABC Plan proposes permissible SLC increases and the creation of an additional USF access recovery mechanism, available only to ILECs, to offset these revenue reductions – purportedly serving a valid federal policy by replacing implicit subsidies (ICC revenues) with explicit subsidies (end user revenues via SLC increases and an additional USF access recovery mechanism).⁴³ However, the ABC Plan filing fails to quantify or address projected expense savings relative to projected lost revenues as a result of reduced ICC rates.

⁴⁰ *Phase II Order* at 7.

⁴¹ *Id.*

⁴² ABC Plan, Attachment 4 at 8.

⁴³ ABC Plan, Attachment 1 at 11; *Comprehensive ICC/USF Reform NPRM* at 222 (“the Telecommunications Act of 1996 directed the Commission to make universal service support explicit, rather than implicitly included in interstate access rates”); 47 U.S.C. § 254(e) (universal service support “should be explicit and sufficient to achieve the purposes of this section”).

a. Consumers' benchmark residential rates may increase 13% in Massachusetts over five years as the SLC increases to as much as \$10.25.

The ABC Plan assumes carriers will not seek additional access revenue recovery until carriers' rates meet a \$30.00 benchmark for residential rates, which would include an increase in the SLC from the allowed \$6.50 to up to \$10.25 over a five-year period.⁴⁴ The \$30.00 benchmark would be "the sum of the local residential rate, federal SLC, state SLC [if applicable], mandatory EAS, and per-line contribution to the state's high-cost fund [if applicable]."⁴⁵ Massachusetts does not have a state SLC or a state high-cost fund. Under the ABC Plan, Massachusetts consumers would see increases in their phone service rates. A carrier currently charging Massachusetts consumers approximately \$26.00 per month for basic dial tone, 911 service and federal SLC could force a \$4.00 increase in the consumer's bill to meet the \$30.00 benchmark.⁴⁶ This increase equates to an over 13% increase in consumer rates and does not include any other non-regulated taxes, fees, or charges the carrier may impose, which would cause the final bill to be higher.

The ABC Plan assumes the existence of a sufficiently competitive intermodal marketplace to constrain any potential SLC increases that carriers could assess.⁴⁷ In Massachusetts, carriers have been assessing consumers just at or below the \$6.50 SLC for primary residential lines.⁴⁸ For example, over the past year Verizon Massachusetts has assessed residential consumers a federal SLC in the range of

⁴⁴ ABC Plan, Attachment 1 at 12.

⁴⁵ *Id.*

⁴⁶ In Massachusetts, the current basic residential rate, including dial-tone, locale usage, the state emergency surcharge, and the current federal SLC cap, totals approximately \$26.89. *See, e.g.,* Verizon Massachusetts Tariff DTE MA No. 10 – Local Exchange and Network, Rates and Charges, Part M, Section 1, Page 14 (Dial-tone/exchange access: \$12.70; Local Usage: \$6.94); MASS. GEN. LAWS ch. 6A, § 18H (state 911/disability access \$.75 surcharge).

⁴⁷ ABC Plan, Attachment 1 at 11-12.

⁴⁸ MDTC staff reviewed several bills submitted by wireline consumers over the past year and noted that carriers assessed just at or below the \$6.50 SLC for primary residential lines. As for Verizon Massachusetts, over the past year it assessed residential consumers a SLC in the range of \$6.35-\$6.41 for primary residential lines.

\$6.35-\$6.41 for primary residential lines.⁴⁹ Of special concern to the MDTC are those consumers who are most vulnerable to price increases, including low income and fixed-income consumers.

b. The ABC Plan's access recovery mechanism may mean additional rate increases for consumers.

To supplement lost access charge revenues for ILECs only, the ABC Plan proposes a temporary access revenue recovery mechanism to be funded via the USF.⁵⁰ According to the proposal, ILECs that experience “exceptionally large” reductions in ICC revenue and impose maximum permitted SLC increases “may recover 90 percent of any revenue reduction greater than the imputed SLC increase.”⁵¹ If the FCC does adopt some form of access recovery mechanism, the recovery should be temporary with a concrete expiration date. However, the MDTC is wary of any proposed “temporary” USF mechanism intended to ameliorate the effects of ICC reform, because the mechanism can easily expand the size of the USF even further, increasing the disproportionate contributions burden already borne by Massachusetts consumers. In addition, the Commission’s last implementation of a USF revenue recovery mechanism meant to be “temporary” is still in existence, resulting in several billion dollars of support to carriers over the past decade and paid for by consumers through their monthly USF contributions.⁵²

2. The proposed \$.0007 terminating access rate will likely decrease Massachusetts consumer choice by negatively impacting competition.

Professor Hausman’s analysis appears to assume a fully competitive marketplace in the wireless and wireline markets, and sufficient intermodal competition between those markets, to drive down

⁴⁹ *Id.*

⁵⁰ ABC Plan, Attachment 1 at 12-13.

⁵¹ *Id.* at 12.

⁵² See Free Press Ex Parte, WC Docket No. 10-90 *et al.*, at 3 (filed Aug. 2, 2011) (discussing the implementation of Interstate Access Support (IAS)); *Comprehensive ICC/USF Reform NPRM* at ¶ 54 (discussing creation of IAS and Interstate Common Line Support).

consumer prices with ICC reductions.⁵³ The Commission does not currently assert that there is effective competition in the wireless industry, which has experienced substantial consolidation over the past decade,⁵⁴ nor in its competitive market analyses does it place mobile wireless service in the same relevant product market as wireline service.⁵⁵ Further, the Commission has not yet found that mobile wireless service constrains the price of wireline service.⁵⁶ As a result, Professor Hausman's reliance on continued competitive market pressure lacks proper support.

Moreover, the ABC Plan does not provide an actual competitive analysis with quantifiable and empirical data explaining how the \$.0007 terminating rate will affect the communications marketplace or why \$.0007 is an appropriate rate. Instead, the ABC Plan relies on certain examples where the \$.0007 rate has been applied – commercial agreements negotiated between carriers; the FCC's \$.0007 reciprocal cap on dial-up ISP-bound traffic; and rates paid by wireless carriers for intraMTA calls.⁵⁷ Unfortunately, these examples are insufficient evidence that the \$.0007 rate is appropriate of universal application.

In the first instance, the commercial negotiations discussion fails to account for any equal or unequal market and bargaining power between the negotiating entities, or other facets of the negotiations that may account for the reduced rates. A contract is not simply a single, negotiated rate. It is an interplay of rates, terms, and conditions that, in theory, is agreed to as a whole. The \$.0007

⁵³ ABC Plan, Attachment 4 at 9.

⁵⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, FCC 11-103, at ¶ 2 (rel. Jun. 27, 2011) (stating that the report “makes no formal finding as to whether there is, or is not, effective competition in the industry”).

⁵⁵ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113, at ¶¶ 57-60 (rel. Jun. 22, 2010) (*Qwest Forbearance Order*) (subsequent history omitted). This comports with the MDTC's own stance that mobile wireless “serves a market distinct from Wireline Voice. Wireless Voice is adopted by individuals, as opposed to households, and provides consumers with mobile communications services.” *Massachusetts Competition Status Report* at 48.

⁵⁶ *Qwest Forbearance Order* at ¶¶ 57-59.

⁵⁷ ABC Plan, Attachment 5 at 34-37; *Comprehensive ICC/USF Reform NPRM* at n.776 (discussing the \$.0007 ISP-bound traffic cap).

contract rate could easily be driven by other factors not made clear to the FCC or to commenting parties. Second, the ISP-bound traffic issue addressed a discrete issue involving asymmetric traffic flows.⁵⁸

Finally, the analysis does not provide any supporting data or cost analysis indicating why the \$.0007 rate is appropriate. As the State Members point out, “there is NO record evidence – no empirical data – no actual cost studies – to support imposing a single industry-wide \$.0007 rate as compensatory.”⁵⁹ Granite Communications, a larger competitive carrier based in Massachusetts serving business customers, urged the FCC in a recent ex parte filing to assess “the need for an end-point intercarrier compensation rate that has a justifiable cost basis, since [Granite’s] underlying wholesale agreements will never reflect a zero (bill-and-keep) or likely even a \$.0007 rate, neither of which reflect actual costs.”⁶⁰ The \$.0007 rate is far below the composite terminating intrastate access rate of Verizon Massachusetts, which it currently has set at \$.003752 or \$.004820 if tandem switching is included.⁶¹ A one-size-fits-all approach may not be appropriate since economies of scale and size vary between carriers. If the Commission sets a uniform terminating rate for all interstate and intrastate traffic without sufficient supporting data, then the long-term viability of numerous providers may be threatened, resulting in the loss of competitive choice to consumers. Without sufficient competition, end-user rates are bound to increase.⁶² Further, the MDTC agrees with the State Member’s

⁵⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131, at ¶ 2 (rel. Apr. 27, 2001) (subsequent history omitted).

⁵⁹ State Member Ex Parte, WC Docket No. 10-90 *et al.*, at 2 (filed Jul. 14, 2011) (State Member Ex Parte).

⁶⁰ Granite Ex Parte, WC Docket No. 10-90 *et al.*, at 2, and Attachment at 11 (filed Jul. 26, 2011).

⁶¹ *Supra* at n.11. The terminating elements include Local Switching, Shared Trunk Port, Local Transport Facility (LTF), Local Transport Termination, and Tandem Switching. *Id.* The LTF may be increased to reflect assumed mileage. *Id.*

⁶² *Massachusetts Competitive Access Rate Order* at 27 (stating that “[o]ne of the consequences of CLECs going out of business is the detrimental effect to functioning competitive markets in which CLECs participate and the customers that they serve ... A flash cut could also cause CLECs to sharply increase end-user rates, resulting in rate shock. The Department has traditionally sought to promote rate continuity in its regulation of retail [and wholesale] rates”).

recommendation for the Commission to “investigate the relationship between access rates and soft switch deployment” as part of any potential access rate cost analysis or revisions.⁶³

To the extent that the Commission adopts a uniform terminating rate cap, the MDTC supports a transition period of at least five years to avoid potential consumer rate shock. Further, this approach will not only permit carriers time to readjust their business models, it will permit states like Massachusetts, which have capped intrastate rates to interstate rates, to revisit their intrastate access regulatory model in a manner that best reflects local conditions and needs. The Commission should permit carriers to obtain some relief from the rate cap to the extent that their reasonable costs may exceed the cap, as the MDTC has done.⁶⁴ This approach will ensure continued carrier viability and competitive choice for consumers and will help to avoid any potential consumer rate shock.

B. The ABC Plan Inappropriately Preempts State Authority Over Intrastate Rates.

Taking a closer look into the ABC Plan reveals the extent to which the Plan supporters seek to reduce the states’ ability to set ICC rates. The ABC Plan urges the FCC to reject state authority to set intrastate access rates and make all traffic “currently subject to either tariffed [interstate and intrastate] access charges or reciprocal compensation charges” fall within the purview of section 251(b)(5) traffic.⁶⁵ The ABC Plan would eliminate the statutorily prescribed state and federal access charge regime.⁶⁶ By subjecting all traffic to section 251(b)(5), the Commission would then establish a purported “methodology,” called a “uniform default rate,” of \$.0007 through a 5-year transition (urged to begin on July 1, 2012), for all terminating traffic that touches the public-switched telephone network

⁶³ State Member Ex Parte at 2.

⁶⁴ *Massachusetts Competitive Access Rate Order* at 28.

⁶⁵ ABC Plan, Attachment 5 at 1.

⁶⁶ 47 U.S.C. § 152(b) (expressly barring Commission regulation “with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with *intrastate communications service* by wire or radio of any carrier,” except where Congress has clearly expressed an exception) (emphasis added); 47 U.S.C. § 251(d)(3) (“**Preservation of State Access Regulation:** In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that – (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section”) (emphasis added).

(PSTN).⁶⁷ In addition, all other rates would be capped, and certain other intrastate rates would transition to interstate levels.⁶⁸ The uniform default rate would not apply to IP-IP traffic or to commercial agreements between carriers.⁶⁹ The plan would only apply to price-cap ILECs and competitive carriers, not rate-of-return ILECs.⁷⁰ Instead, the RLEC Plan would apply to those carriers.⁷¹

The ABC Plan inappropriately preempts state authority over intrastate access charges. The Plan includes a “Legal Authority White Paper” that, in part, purports to explain how and why the Commission has the legal authority to institute such sweeping state preemption.⁷² The legal arguments presented in this White Paper are repetitive of arguments already made on the record by Verizon⁷³ and AT&T,⁷⁴ and are as equally invalid now as they were when the companies previously filed them. The Commission does not have the requisite legal authority to preempt intrastate access charge regimes. The MDTC directs the Commission’s attention to the MDTC’s responsive legal arguments regarding the lack of preemption authority filed in 2008 and, more recently, on April 15, 2011, and incorporates those comments in their entirety herein.⁷⁵

States are better suited to target intrastate reform where and when it is needed. As indicated above, Massachusetts has already successfully implemented substantial intrastate access reform and is

⁶⁷ ABC Plan Attachment 1, at 10-11, Attachment 5 at 1-2. This would also apply to VoIP traffic. *Id.* The ABC Plan is unclear as to whether it applies to all types of VoIP or only to facilities-based, or “fixed”, VoIP.

⁶⁸ ABC Plan, Attachment 1 at 11, Attachment 5 at 1.

⁶⁹ ABC Plan, Attachment 1 at n.10, Attachment 5 at 1.

⁷⁰ ABC Plan, Attachment 1 at 9.

⁷¹ Joint Letter at 1-2.

⁷² ABC Plan, Attachment 5 at 9-37.

⁷³ Verizon Ex Parte White Paper, *The Commission has Legal Authority to Adopt a Single, Default Rate For All Traffic Routed on the PSTN*, CC Docket No. 01-92 *et al.* (filed Sept. 19, 2008), available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520169704> (last viewed Aug. 15, 2011).

⁷⁴ AT&T Comments, WC Docket No. 10-90 *et al.*, at 37-54 (filed Apr. 18, 2011), available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021239563> (last viewed Aug. 15, 2011).

⁷⁵ NECPUC Ex Parte, CC Docket No. 01-92 *et al.* (filed Oct. 17, 2008) (MDTC as signatory); MDTC Comments, WC Docket No. 05-337 *et al.*, at 7-9 (filed Nov. 26, 2008); MDTC Comments, WC Docket No. 10-90 *et al.*, at 20-22 (filed Apr. 15, 2011) (MDTC April 2011 Comments).

better positioned to implement and target reform efforts to local conditions. The FCC should retain state rate setting authority as part of its strategy to reform the intercarrier compensation regime and the USF.

V. UNIVERSAL SERVICE CHANGES UNDER THE ABC PLAN SHOULD TREAT CONSUMER CONTRIBUTIONS FAIRLY AND INCLUDE STATE OVERSIGHT.

The FCC also seeks comment on several aspects of the different proposals submitted for universal service reform, including issues “not fully developed on the record.”⁷⁶ The MDTC requests a more equitable and baseline USF support for each state than the ABC Plan envisions and briefly responds to several of the FCC’s issues.

A. The USF Needs To Reflect A More Equitable Level Of Support For States And Funding Needs to be Capped.

Massachusetts is not only a net-contributor state, but it is also an outlier state whose contributions totals far exceeds our support levels. For 2009, Massachusetts’ net dollar flow, accounting for adjustment, totaled approximately \$123,000,000.⁷⁷ Relative to the other 49 states and the District, this ranks the state 4th lowest for total USF support received per dollar contributed, receiving only \$0.27 per dollar contributed.⁷⁸ For high-cost support, Massachusetts ties with Delaware for 2nd lowest in support (Connecticut, the District, Rhode Island, and New Jersey tie at 1st).⁷⁹

As Table 3 shows, between 2000 and 2009, Massachusetts’ estimated contributions to the USF exceeded \$1.4 billion, compared to the roughly \$415 million received in support. Only \$21.9 million went to high-cost support over the same period. Clearly, the data indicate that Massachusetts consumers shoulder a greater burden of the USF than they receive in benefits, relative to other states.

⁷⁶ Notice at 2.

⁷⁷ *2010 Monitoring Report* at Table 1.12.

⁷⁸ *See* MDTC Comments Table 1.

⁷⁹ *See* MDTC Comments Table 2.

As a result, the MDTC reiterates that the Commission should strongly consider ensuring a more equitable disbursement of funding and a baseline level of CAF support.⁸⁰

TABLE 1⁸¹

	States and District	Total USF Support Rec'd per Dollar Contributed (2009)
1	Delaware	\$0.06
2	Maryland	\$0.09
3	New Jersey	\$0.21
4	Massachusetts	\$0.27
5	Connecticut	\$0.28
6	D.C.	\$0.28
7	New Hamp.	\$0.32
8	Rhode Island	\$0.36
9	Florida	\$0.45
10	Nevada	\$0.47
11	Pennsylvania	\$0.48
12	Illinois	\$0.50
13	Ohio	\$0.52
14	Virginia	\$0.56
15	Michigan	\$0.69
16	Indiana	\$0.71
17	Utah	\$0.71
18	California	\$0.71
19	New York	\$0.71
20	Colorado	\$0.73
21	N. Carolina	\$0.79
22	Tennessee	\$0.88
23	Washington	\$0.90
24	Arizona	\$0.96
25	Georgia	\$0.98
26	Missouri	\$1.00
27	Texas	\$1.00
28	Oregon	\$1.11
29	Maine	\$1.28
30	Alabama	\$1.30
31	Minnesota	\$1.30
32	S. Carolina	\$1.32
33	Vermont	\$1.40
34	Wisconsin	\$1.41
35	W. Virginia	\$1.44
36	Kentucky	\$1.45
37	Idaho	\$1.60
38	Hawaii	\$1.65
39	Louisiana	\$1.92
40	Iowa	\$2.11
41	New Mexico	\$2.35
42	Arkansas	\$2.46
43	Nebraska	\$3.10
44	Oklahoma	\$3.18
45	Montana	\$3.52
46	Wyoming	\$3.64
47	Kansas	\$3.78
48	Mississippi	\$4.81
49	S. Dakota	\$5.61
50	N. Dakota	\$6.22
51	Alaska	\$12.53

TABLE 2⁸²

	States and District	High Cost Support per Dollar Contributed (2009)
1	District of Columbia	\$0.00
2	Connecticut	>\$0.00
3	Rhode Island	>\$0.00
4	New Jersey	>\$0.00
5	Delaware	\$0.01
6	Massachusetts	\$0.01
7	Maryland	\$0.02
8	New York	\$0.09
9	Ohio	\$0.13
10	California	\$0.13
11	Florida	\$0.14
12	Pennsylvania	\$0.19
13	New Hampshire	\$0.24
14	Illinois	\$0.24
15	Michigan	\$0.30
16	Utah	\$0.35
17	Virginia	\$0.35
18	Nevada	\$0.37
19	Tennessee	\$0.37
20	North Carolina	\$0.38
21	Arizona	\$0.46
22	Texas	\$0.51
23	Indiana	\$0.51
24	Georgia	\$0.56
25	Colorado	\$0.60
26	Washington	\$0.61
27	Missouri	\$0.76
28	Alabama	\$0.84
29	Maine	\$0.87
30	Oregon	\$0.88
31	South Carolina	\$0.89
32	Kentucky	\$1.05
33	Minnesota	\$1.08
34	Wisconsin	\$1.11
35	Vermont	\$1.17
36	West Virginia	\$1.19
37	Idaho	\$1.37
38	Louisiana	\$1.47
39	New Mexico	\$1.48
40	Hawaii	\$1.58
41	Oklahoma	\$1.82
42	Iowa	\$1.89
43	Arkansas	\$2.18
44	Nebraska	\$2.80
45	Montana	\$3.17
46	Wyoming	\$3.36
47	Kansas	\$3.50
48	Mississippi	\$4.21
49	South Dakota	\$5.08
50	North Dakota	\$5.75
51	Alaska	\$8.62

⁸⁰ MDTC April 2011 Comments at 11-12.

⁸¹ Data from Table 1 utilizes data from Table 1.12 of the *2010 Monitoring Report*.

⁸² Data from Table 2 utilizes data from Table 1.12 of the *2010 Monitoring Report*.

TABLE 3 – MASSACHUSETTS-SPECIFIC TOTALS FOR 2000 THRU 2009

<u>Year</u>	<u>High-Cost Support</u>	<u>Low-Income Support</u>	<u>Schools and Libraries</u>	<u>Rural Health Care</u>	<u>State Total</u>	<u>% of National Total</u>	<u>Estimated MA Contributions</u>	<u>% of Total Contributions</u>	<u>Estimated net Dollar Flow</u>	<u>Year of Source report</u>
2000 ⁸³	\$1,269.00	\$14,945.00	\$26,080.00	\$0.00	\$42,294.00		\$113,984.00		-\$71,692.00	2001
2001	\$1,424.00	\$16,008.00	\$28,398.00	\$0.00	\$45,831.00	0.99%	\$128,423.00	2.74%	-\$82,592.00	2002
2002	\$1,348.00	\$17,611.00	\$27,600.00	\$0.00	\$46,558.00	0.88%	\$138,590.00	2.61%	-\$92,031.00	2004
2003	\$2,120.00	\$17,563.00	\$27,331.00	\$0.00	\$47,014.00	0.86%	\$135,081.00	2.44%	-\$88,067.00	2005
2004	\$2,253.00	\$15,792.00	\$13,420.00	\$0.00	\$31,465.00	0.55%	\$140,153.00	2.44%	-\$108,688.00	2005
2005	\$3,634.00	\$14,270.00	\$20,954.00	\$0.00	\$38,858.00	0.60%	\$157,471.00	2.38%	-\$118,613.00	2006
2006	\$2,827.00	\$13,045.00	\$25,069.00	\$37.00	\$40,978.00	0.62%	\$156,510.00	2.33%	-\$115,532.00	2007
2007	\$2,299.00	\$11,933.00	\$25,140.00	\$52.00	\$39,424.00	0.57%	\$168,735.00	2.39%	-\$129,311.00	2008
2008	\$2,365.00	\$10,887.00	\$23,085.00	\$130.00	\$36,467.00	0.51%	\$163,789.00	2.25%	-\$127,322.00	2009
2009	\$2,413.00	\$21,043.00	\$22,729.00	\$150.00	\$46,335.00	0.64%	\$169,539.00	2.28%	-\$123,204.00	2010
	\$21,952.00				\$415,224.00		\$1,472,275.00			
Note: All figures in thousands of dollars										
Table Source: Federal-State Joint Board Annual Monitoring Reports.										

The ABC Plan companies submitted a written *ex parte* on August 16, 2011, listing estimated CAF support to each state for price cap carriers under their Plan.⁸⁴ The filing lists Massachusetts as receiving a little over \$8.2 million in support, compared to the \$2.4 million in high-cost funding received in 2009 as shown in Table 3, above.⁸⁵ If implemented, the ABC Plan funding would most likely go to Verizon Massachusetts, receiving approximately \$1.5 million of Massachusetts' 2009 high-cost support.⁸⁶ While the MDTC supports a more equitable disbursement of funding, the MDTC also supports funding based on appropriate supporting data. This most recent *ex parte* filing, coupled with the ABC Plan filing, lacks sufficient data and leaves several questions to be answered, such as: (1) are the estimated funding levels appropriate or necessary for every state; (2) is there a way to reduce the Fund's size, thereby decreasing the consumer contributions burden; and (3) how does the ABC Plan's

⁸³ Note: Year 2000 data compiled from separate tables in the 2001 report; rural healthcare contribution unavailable, and therefore not factored in. In addition, Year 2000 E-Rate data accounts for July 1, 1999 through June 30, 2000.

⁸⁴ US Telecom Ex Parte filing on behalf of the ABC Plan companies, CC Docket No. 01-92 *et al.*, Attachment B, "ABC Plan CAF Funding Distribution by State" (filed Aug. 16, 2011).

⁸⁵ *Id.*

⁸⁶ 2010 Monitoring Report, comparing Tables 3.28 and 3.30.

proposed access recovery mechanism break out for each state? Further, while expanded funding may flow to Massachusetts (and other states) for broadband deployment, the ABC Plan does not sufficiently explain why the contributions burden needs to be supported by voice consumers.

To implement a more consumer-equitable distribution of funding, the Commission should eliminate the “rural” and “non-rural” carrier distinctions, as proposed in the Notice.⁸⁷ Funding should rely less on carrier distinctions and more on the characteristics of the area served.⁸⁸ Massachusetts, like most other states, has areas unserved and underserved by broadband. Directing USF funding for broadband deployment could help to subsidize middle-mile and last-mile facilities in areas that are otherwise cost prohibitive to serve. As the Commission transitions toward inclusion of broadband connectivity through the CAF, a renewed focus on the consumers who still lack access to advanced services is warranted.

The Commission should implement a cap on high-cost and CAF funding. The ABC Plan and the Joint Letter both recommend that reform be conducted within a defined budget, and the FCC seeks comment on this proposal.⁸⁹ Consistent with the MDTC’s previous comments, the MDTC supports capping and restraining the growth of the high-cost fund and its CAF replacement.⁹⁰ In addition, support for any new mechanisms should not increase existing total USF levels – i.e., to the extent that it is more equitably distributed, support (and possible USF reductions) should be based on savings

⁸⁷ Notice at 2-3.

⁸⁸ See Senator John Kerry Statements, “Kerry Renews Call for Universal Internet Access – Calls for Restructuring of Universal Service System to Connect Americans to Broadband, Increase Access for Massachusetts,” (rel. Jun. 24, 2010) (stating “we must make sure the billions we spend to execute on that mission are spent effectively and efficiently and focused on increasing the number of Americans who receive and connect to our broadband network rather than on the size of the companies that receive the subsidy”), available at: <http://kerry.senate.gov/press/release/?id=27d725f6-50dd-4a1e-ab34-1315643e39d2> (last viewed Aug. 15, 2011).

⁸⁹ Notice at 9.

⁹⁰ MDTC April 2011 Comments at 8-10.

incurred from reform of the existing high-cost fund.⁹¹ Both approaches will help to alleviate the contributions burden place on Massachusetts consumers.

The MDTC takes note of recent *ex parte* comments submitted by the Rural Utilities Service (RUS) discussing how USF funding is calculated into rural development loans made by the agency.⁹² RUS indicates that the “reduction or loss of revenue not otherwise replaced by another source will affect the ability of the agency to make [long-term debt] loans and manage the security of the loan portfolio.”⁹³ However, RUS also indicates that it “does not vary interest rates based on risk, or set a higher [measure of a borrower’s ability to service its debts] requirement for riskier borrowers.”⁹⁴ While the MDTC believes that the FCC needs to consider the potential for carrier default, the FCC also needs to address the potential measures it can take to discourage reliance on USF subsidies for debt accrued by carriers. This approach will also help to drive down funding levels.

B. USF Reform Should Retain State Roles.

The State Member Plan urges, and the FCC appears to consider, an ongoing role for states in monitoring and oversight over federal USF recipients.⁹⁵ However, based on ABC Plan proposals, the FCC may also be considering preemption of COLR requirements imposed by states and state designation of ETC for purposes of CAF support. The MDTC urges the FCC to reject this latter approach.

1. COLR requirements are essential to universal service.

The MDTC is incredibly troubled by the ABC Plan’s recommendation to preempt state COLR obligations – longstanding requirements that predate the existing federal USF, created to ensure that

⁹¹ *Id.* at 14-16.

⁹² RUS Ex Parte Attachment, WC Docket No. 10-90 *et al.* (filed Jul. 29, 2011).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Notice at 5.

consumers have universal basic, affordable phone service.⁹⁶ The Plan’s primary premise is that such obligations “negate the Commission’s policy of ensuring that broadband is deployed throughout the nation.”⁹⁷ Verizon is the primary Massachusetts COLR for intrastate local exchange services.⁹⁸ The MDTC imposed this requirement on Verizon in 1985, and, like other states that impose COLR obligations, the MDTC’s intent was to “ensure the continuation of our goal of universal [voice] service.”⁹⁹

While the MDTC endorses the concept of universal broadband access, available to consumers at just and reasonable rates, terms, and conditions and with sufficient service quality (similar to existing state telecommunications requirements), such a concept does not negate the continued consumer need for basic, affordable voice service. While America will achieve universal broadband access sometime in the future, that access has not yet been achieved. Although the Commission does not seek comment on this proposal, the MDTC strongly recommends that the Commission disregard the ABC Plan’s recommendation to eliminate COLR requirements.

2. States should retain ETC designation authority for USF support.

Both the ABC Plan and the Notice are vague on whether a provider receiving USF funds for broadband will need to be a designated ETC. In fact, the Notice has a section entitled “Eligible Telecommunications Carrier (ETC) Requirements” that inquires about the ABC Plan’s procurement funding model, but nowhere does it make specific inquiries on ETC designation requirements.¹⁰⁰

⁹⁶ ABC Plan, Attachment 5 at 6-7.

⁹⁷ *Id.* at 8.

⁹⁸ *Massachusetts COLR Order* at 71-77; *Proceeding by the Department on its own Motion to Implement the Requirements of the FCC’s Triennial Review Order Regarding Switching for Mass Marker Customers, Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariff: MDTE No. 17, filed with the Department on June 23, 2004 to become effective on July 23, 2004 by Verizon*, D.T.E. 03-60/04-73, Consolidated Order Dismissing Triennial Review Order Investigation and Vacating Suspension of Tariff M.D.T.E. No. 17, at 27-28 (issued Dec. 15, 2004) (discussing existing state COLR obligations and declining to expand Verizon’s designation to include wholesale services), available at: <http://www.mass.gov/Eoca/docs/dtc/dockets/03-60/1215conord.pdf> (last viewed Aug. 15, 2011).

⁹⁹ *Massachusetts COLR Order* at 21.

¹⁰⁰ Notice at 5.

However, the ABC Plan’s “Legal Authority” paper urges the Commission to preempt any state attempt to impose obligations on a provider’s receipt of federal broadband support based on the argument that broadband is an interstate service.¹⁰¹ The states’ ETC designation and oversight authority is clearly established under federal law.¹⁰² The MDTC urges the FCC to retain the existing ETC designation framework and reject the proposal recommended by the ABC Plan.

3. States can examine broadband deployment investments and new construction charges.

The Commission inquires whether, if it implements a right-of-first-refusal (ROFR) mechanism for broadband funding to existing incumbent ETCs, states would be able to determine if a provider has made a “substantial broadband investment in a particular area, and therefore would be eligible to be offered support amounts determined under a forward-looking model?”¹⁰³ The FCC also notes that the ABC Plan fails to account for a funding recipient’s obligation to serve newly built locations within a supported area and, as a result, it inquires whether states should determine “whether any charges for extending service to newly constructed buildings are reasonable, based on local conditions.”¹⁰⁴

The MDTC believes that Massachusetts is well-equipped to be charged with both duties. Massachusetts and other states already have substantial experience implementing the forward-looking TELRIC cost model imposed by the FCC on all telecommunications carriers, as well as experience in determining reasonable costs for newly-built locations.¹⁰⁵ In addition, the FCC already grants to state utility commissions, including the MDTC, direct access to granular, state-level Form 477 reporting

¹⁰¹ ABC Plan, Attachment 5 at 58-59.

¹⁰² 47 U.S.C. §§ 214(e) and 254(f).

¹⁰³ Notice at 5.

¹⁰⁴ *Id.*

¹⁰⁵ See e.g., *Investigation by the Department on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts’ Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20 Part A-C, Order on Verizon Massachusetts’ Motion to Reopen the Record, at 4-9 and 37-46 (Dec. 15, 2004) (describing the proceeding’s background and the MDTC’s application of TELRIC), available at: <http://www.mass.gov/Eoca/docs/dtc/dockets/01-20/1215acorder.pdf> (last viewed Aug. 15, 2011).

data, which the Commission relies upon for many of its own analyses.¹⁰⁶ If, however, states elect to assume these responsibilities (or are otherwise non-federal default states), the MDTC urges that the FCC ensure that entities immediately comply with all data requests made by state commissions in the course of those duties.¹⁰⁷ Further, the FCC will need to provide states with sufficient time to comply with any reporting or determinations to be made.

4. States should receive USF recipient data.

The FCC asks whether states should receive copies of all information submitted to the Commission and USAC regarding compliance with public interest obligations.¹⁰⁸ The FCC should mandate such a requirement if the state commission certifies to FCC that the state wants the information. Moreover, the FCC should require that all entities operating within a state file their disaggregate Form 477 data directly with the state commissions at the same time that they file it with the FCC. This will address the current delay that state commissions experience with the current receipt of Form 477 data and will permit the state commissions to comply with any potential review of ETC broadband build-out and competitive build-out. Second, the FCC needs to ensure that disbursement and support data meshes with data submission requirements. As an example, current Form 477 reporting requires census tract reporting for broadband, whereas, if the FCC implements portions of the ABC Plan, broadband support would be based on census blocks.¹⁰⁹ Furthermore, such a requirement will assist with greater carrier accountability going forward.

¹⁰⁶ *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, FCC 00-114, at ¶ 95 (rel. March 30, 2000) (permitting the Wireline Competition Bureau Chief to grant state commissions access to granular, state-specific data); *In the Matter of Local Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, FCC 04-266, at ¶ 26 (rel. Nov. 12, 2004) (deciding to retain the policies and procedures with regard to data-sharing arrangements). Also, the MDTC recognizes that the FCC Form 477 can be a valuable supplement to entity USF reporting obligations.

¹⁰⁷ Between Commission receipt of Form 477 filings and the Commission's provision of the data to the states, there is currently a 6-8 month lag time.

¹⁰⁸ Notice at 5.

¹⁰⁹ Notice at 4. The FCC should also reconsider requiring Form 477 filers to submit all data at something less than census tract, since current filing requirements vary according to certain services. See FCC Form 477 Filing Instructions at 14-15.

VI. CONCLUSION

For these reasons, the FCC should adjust the ABC Plan, if adopted, to reflect the public interest as described in these comments.

Respectfully submitted,

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